

REMARKS

Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks. Claims 1-38 were pending prior to the Office Action. Of these, claims 3, 12-19, 22, and 30-38 have been withdrawn from consideration. Through this reply, claims 39-55 have been added. Therefore, claims 1-55 are pending. Claims 1 and 22 are independent.

ALLOWABLE SUBJECT MATTER

Applicants appreciate that the claims 5-9 and 24-27 are indicated to define allowable subject matter. These claims have been amended, but only to be consistent with the amendments made to the independent claims 1 and 20. It is intended that the scopes of claims 5-9 and 24-27 remain substantially the same.

CLAIMS 1 AND 20 GENERIC TO ALL SPECIES

In the Office Action, the Examiner alleged that independent claims 1 and 20 are only generic to the first and third embodiments. Applicants respectfully disagree. In other words, these claims are also generic to the second embodiment.

The first, second, and third embodiments correspond to figures. 4, 5, and 7. Also, figures 8 and 10 correspond to the methods performed by the first and second embodiments, respectively. In both figures 8 and 10, the steps S100, S102 and S103 are present. More specifically, in step S100, the digital camera is used to photograph images. Then in step S102, it

is determined if the photography has completed. *See specification, page 26, lines 27-28 for the first embodiment; page 31, lines 30-31 for the second embodiment.* Then in S103, the transmission control unit judges whether there are transmission allowance conditions other than the completion of photography. *See specification, page 26, lines 28-30; page 31, line 31-page 32, line 2.*

Independent claims 1 and 20 are directed toward the steps that are common to all embodiments. Therefore, contrary to the Examiner's allegation, claims 1 and 20 are generic to all embodiments as shown.

REJOINDER

As demonstrated above, independent claims 1 and 20 are generic to all species including the non-elected species. Therefore, the withdrawn claims 3, 12-19, 22, 30-38 are subject to rejoinder with and when the generic claims are allowed.

OBJECTION TO THE CLAIM

In the Office Action, claim 6 stands objected to for informalities. *See Office Action, item 2.* Claim 6 has been amended to address the issues raised by the Examiner. Applicants respectfully request that the objection to the claims be withdrawn.

§ 102 REJECTION – KOIDE

Claims 1, 20 and 38 stand rejected under 35 USC §102(e) as allegedly being anticipated by Koide (JP 2000134531-A) *See Office Action, items 3-7*. Applicants respectfully traverse.

For a §102 rejection to be proper, the cited reference must teach or suggest each and every claimed element. *See M.P.E.P. 2131; M.P.E.P. 706.02*. Thus, if the cited reference fails to teach or suggest one or more elements, then the rejection is improper and must be withdrawn.

In this instance, Koide fails to teach or suggest each and every claimed element of the claims. For example, independent claim 1 recites, in part “if said transmission control unit judges that the completion of photography condition is satisfied, then said transmission control unit judges whether there is at least one transmission allowance condition other than the completion of photography to be checked.”

In the Office Action, the Examiner relied upon Koide to reject independent claims 1 and 20. Koide is directed toward an image pickup device which allows a photograph of a new image to be taken while image data is being transmitted from the image pickup device to a computer. Koide discloses that each image data is broken into a plurality of transmission packets and the packets are transmitted to the computer one by one. When an interrupt occurs, for example by a user taking a photograph, the packet transmission is interrupted, the photograph is taken, and then packet transmission is resumed to complete the image transmission.

In the Office Action, the Examiner alleged that the resumption of packet transmission is equivalent to determining whether the photography has been completed and transmitting the photo images.

However, it is noted that Koide is completely silent regarding whether or not that there are allowance conditions other than the completion of photography to be checked. Even if the Examiner's allegation is taken to be true, Koide merely discloses that the transmission of packets is resumed upon completion of photography. No other condition checking is disclosed. Thus, Koide cannot be relied upon to teach or suggest the feature of judging whether there is at least one transmission allowance condition other than the completion of photography to be checked. For at least the above stated reasons, independent claims 1 and 20 are distinguishable over Koide. Claim 38 depends from independent claim 20. Thus, for at least the reasons stated above with respect to claim 20, claim 38 is also distinguishable over Koide.

Applicants respectfully request that the rejection of claims 1, 20 and 38 based on Koide be withdrawn.

§ 103 REJECTIONS

Claims 2 and 21 stand rejected under 35 USC §103(a) as allegedly being unpatentable over Koide in view of Tamura et al. (2004/0169730); claims 4 and 23 stand rejected as allegedly being unpatentable over Koide in view of Iizuka (JP 09-288684); claims 10 and 28 stand rejected as allegedly being unpatentable Koide in view of Morimoto et al. (U.S. Patent 6, 774,935); and claims 11 and 29 stand rejected as allegedly being unpatentable over Koide in view of Safai (U.S. Patent 6, 715,003). *See Office Action, items 8-20.* Applicants respectfully traverse.

These rejected claims all depend from independent claims 1 or 20, directly or indirectly. It has been shown above that claims 1 and 20 are distinguishable over Koide. None of Tamura et al., Iizuka, Morimoto and Safai have been relied upon, nor can they be relied upon, to correct for

at least above noted deficiencies of Koide. Therefore, independent claims 1 and 20 are distinguishable over the cited references.

For at least due to the dependency thereon, these dependent claims are also distinguishable over the combination of the cited references. Applicants respectfully request that the rejection of claims 2 and 21 under Koide and Tamura et al., 4 and 23 under Koide and Iizuka, 10 and 28 under Koide and Morimoto, and 11 and 29 under Koide and Safai be withdrawn.

NEW CLAIMS

Claims 39-55 have been added through this reply. All new claims are believed to be distinguishable over the cited references, individually or in any combination. Applicants respectfully request that the new claims be allowed.

CONCLUSION

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Should there be any outstanding matters that need to be resolved, the Examiner is respectfully requested to contact Hyung Sohn (Reg. No. 44,346), to conduct an interview in an effort to expedite prosecution in connection with the present application.

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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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